

House Bill 158 (COMMITTEE SUBSTITUTE)

By: Representatives Willard of the 49th, Jacobs of the 80th, Oliver of the 83rd, Lane of the 167th, and Everson of the 106th

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 7 of Title 19 the Official Code of Georgia Annotated, relating to parent and child relationship generally, so as to clarify methods of legitimation of a child; to change provisions relating to petitions for legitimation of a child; to provide the courts with the ability to order genetic testing upon its own order; to change certain provisions relating to voluntary acknowledgments of paternity; to amend Chapter 11 of Title 15, Chapter 8 of Title 19, Code Section 29-2-15, and Chapter 2 of Title 53 of the Official Code of Georgia Annotated, relating to juvenile proceedings, adoption, notice of petition for appointment of permanent guardian, protest of father, and petition to legitimate, and descent and distribution, respectively, so as to correct cross-references; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 7 of Title 19 the Official Code of Georgia Annotated, relating to parent and child relationship generally, is amended by adding a new Code section to read as follows:

"19-7-21.1.

(a) As used in this Code section, the term:

(1) 'Acknowledgment of legitimation' means a written statement contained in a voluntary acknowledgment of paternity form indicating that a mother and father of a child born out of wedlock have freely agreed and consented that the child may be legitimated.

(2) 'Legal father' means a male who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of that child at the time the child was conceived or was born, unless such paternity was disproved by a final order pursuant to Article 3 of this chapter;

1 (C) Married the legal mother of the child after the child was born and recognized the
2 child as his own, unless such paternity was disproved by a final order pursuant to
3 Article 3 of this chapter;

4 (D) Has been determined to be the father by a final paternity order pursuant to Article
5 3 of this chapter;

6 (E) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or

7 (F) Has legitimated a child pursuant to this Code section

8 and who has not surrendered or had terminated his rights to the child.

9 (b) Prior to the child's first birthday, a father of a child born out of wedlock may render
10 his relationship with the child legitimate when both the mother and father have freely
11 agreed, consented, and signed a voluntary acknowledgment of paternity and an
12 acknowledgment of legitimation which have been made and have not been rescinded
13 pursuant to Code Section 19-7-46.1. The State Office of Vital Records shall provide
14 notice, in writing, of the alternatives to, legal consequences of, and the rights and
15 responsibilities of signing a voluntary acknowledgment of legitimation.

16 (c) Voluntary acknowledgment of legitimation shall not be recognized if:

17 (1) The mother was married to another man when the child was born;

18 (2) The mother was married to another man at any time within the usual period of
19 gestation;

20 (3) There is another legal father;

21 (4) The mother has voluntarily and in writing surrendered all of her parental rights
22 pursuant to the provisions of subsection (a) of any of Code Section 19-8-4, 19-8-5,
23 19-8-6, or 19-8-7 and has not withdrawn her surrender as permitted by the provisions of
24 subsection (b) of Code Section 19-8-9 or the mother's parental rights have been
25 judicially terminated by a court of competent jurisdiction or an action to terminate such
26 rights has been initiated and is pending;

27 (5) The mother has signed a voluntary acknowledgment of legitimation with another
28 man; or

29 (6) The child is one year of age or older.

30 (d) If any of the circumstances described in subsection (c) of this Code section exists, the
31 provisions of Code Section 19-7-22 shall be the only method of legitimation.

32 (e) Voluntary acknowledgment of legitimation shall not authorize the father to receive
33 custody or visitation until there is a judicial determination of custody or visitation.

34 (f) It shall be unlawful to make a false statement on a voluntary acknowledgment of
35 legitimation, and the making of a false statement shall be punishable as an act of false
36 statements and writings under Code Section 16-10-20.

(g) Where a voluntary acknowledgment of paternity is timely rescinded and includes a voluntary acknowledgment of legitimation, the legitimation shall also be deemed rescinded."

SECTION 2.

Said chapter is further amended by revising Code Section 19-7-22, relating to petition for legitimation of child, as follows:

"19-7-22.

(a) A father of a child born out of wedlock may render his relationship with the child legitimate by petitioning the superior court of the county of the residence of the child's mother or other party having legal custody or guardianship of the child; provided, however, that if the mother or other party having legal custody or guardianship of the child resides outside the state or cannot, after due diligence, be found within the state, the petition may be filed in the county of the father's residence or the county of the child's residence. If a petition for the adoption of the child is pending, the father shall file the petition for legitimation in the county in which the adoption petition is filed.

(b) The petition shall set forth the name, age, and sex of the child, the name of the mother, and, if the father desires the name of the child to be changed, the new name. If the mother is alive, she shall be named as a party and shall be served and provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the 'Georgia Civil Practice Act.' If there is a legal father, as such term is defined in Code Section 19-7-21.1, he shall be named as a party and shall be served and provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

(c) Upon the presentation and filing of the petition, and after a hearing, the court may pass an order declaring the father's relationship with the child to be legitimate, provided that such is in the best interest of the child and that the father and child shall be capable of inheriting from each other in the same manner as if born in lawful wedlock and specifying the name by which the child shall be known.

(d) A legitimation petition may be filed, pursuant to paragraph (2) of subsection (e) of Code Section 15-11-28, in the juvenile court of the county in which a deprivation proceeding regarding the child is pending. Such petition shall contain the same information and require the same notice as set forth in subsection (b) of this Code section, and the juvenile court shall proceed in accordance with subsection (c) of this Code section. After a petition for legitimation has been granted, if a demand for jury trial as to matters of child support has been properly filed by either parent, then the case shall be transferred from the juvenile court to the superior court for such determination.

1 (e) Except as provided by subsection (f) of this Code section when there is a demand for
2 a jury trial and the matter is transferred from juvenile court to superior court, the court shall
3 upon notice to the mother further establish such duty as the father may have to support the
4 child, considering the facts and circumstances of the mother's obligation of support and the
5 needs of the child as provided under Code Section 19-6-15.

6 ~~(f) After a petition for legitimation is granted, if a demand for a jury trial as to support has~~
7 ~~been properly filed by either parent, then the case shall be transferred from juvenile court~~
8 ~~to superior court for such jury trial.~~

9 (f.1) The petition for legitimation may also include claims for visitation, parenting time,
10 or custody. If such claims are raised in the legitimation action, the court may order, in
11 addition to legitimation, visitation, parenting time, or custody based on the best interests
12 of the child standard. In a case involving allegations of family violence, the provisions of
13 paragraph (4) of subsection (a) of Code Section 19-9-3 shall also apply.

14 (g)(1) In any petition to establish paternity pursuant to paragraph (4) of subsection (a) of
15 Code Section 19-7-43, the alleged father's response may assert a third-party action for the
16 legitimation of the child born out of wedlock. Upon the determination of paternity or if a
17 voluntary acknowledgment of paternity has been made and has not been rescinded pursuant
18 to Code Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the
19 provisions of Code Section 19-7-51 may enter an order or decree legitimating a child born
20 out of wedlock, provided that such is in the best interest of the child. Whenever a petition
21 to establish the paternity of a child is brought by the Department of Human Resources,
22 issues of name change, visitation, and custody shall not be determined by the court until
23 such time as a separate petition is filed by one of the parents or by the legal guardian of the
24 child, in accordance with Code Section 19-11-8; if the petition is brought by a party other
25 than the Department of Human Resources or if the alleged father seeks legitimation, the
26 court may determine issues of name change, visitation, and custody in accordance with
27 subsections (b) and (f.1) (f) of this Code section. Custody of the child shall remain in the
28 mother unless or until a court order is entered addressing the issue of custody.

29 ~~(2) In any voluntary acknowledgment of paternity which has been made and has not been~~
30 ~~rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely~~
31 ~~agree and consent, the child may be legitimated by the inclusion of a statement indicating~~
32 ~~a voluntary acknowledgment of legitimation.~~

33 (h) The court on its own motion may order or any party may make a motion for the court
34 to order the mother, the alleged father, and the child or children to submit to genetic tests
35 pursuant to the standards outlined in Code Section 19-7-45. Such motion shall be
36 supported by a sworn statement (1) alleging paternity and setting forth facts establishing
37 a reasonable possibility of the requisite sexual contact between the parties; or (2) denying

1 paternity and setting forth facts establishing a reasonable possibility of the nonexistence
2 of sexual contact between the parties. Appropriate orders shall be issued in accordance
3 with the provisions of this article. The court shall grant the motion unless it finds good
4 cause as defined by the federal Social Security Act or if other good excuse for
5 noncooperation is established."

6 **SECTION 3.**

7 Said chapter is further amended by revising Code Section 19-7-25, relating to in whom
8 parental power over child born out of wedlock lies, as follows:

9 "19-7-25.

10 Only the mother of a child born out of wedlock is entitled to his custody of the child,
11 unless the father legitimates ~~him~~ the child as provided in Code Section 19-7-21.1 or
12 19-7-22 . Otherwise, the mother may exercise all parental power over the child."

13 **SECTION 4.**

14 Said chapter is further amended in Code Section 19-7-43, relating to a petition to establish
15 paternity, procedure, and testing, by revising subsection (d) as follows:

16 "(d) In any case in which the paternity of a child or children has not been established, the
17 court on its own motion may order or any party may make a motion for the court to order
18 the mother, the alleged father, and the child or children to submit to genetic tests as
19 specified in Code Section 19-7-45. Such motion shall be supported by a sworn statement
20 (1) alleging paternity and setting forth facts establishing a reasonable possibility of the
21 requisite sexual contact between the parties; or (2) denying paternity and setting forth facts
22 establishing a reasonable possibility of the nonexistence of sexual contact between the
23 parties. Appropriate orders shall be issued in accordance with the provisions of this article.
24 The court shall grant the motion unless it finds good cause as defined by the federal Social
25 Security Act or if other good excuse for noncooperation is established."

26 **SECTION 5.**

27 Said chapter is further amended in Code Section 19-7-46.1, relating to voluntary
28 acknowledgments of paternity and other evidence of paternity, by revising subsection (b) as
29 follows:

30 "(b) When both the mother and father have signed a voluntary acknowledgment of
31 paternity and the acknowledgment is recorded in the putative father registry established by
32 subsection (d) of Code Section 19-11-9, the acknowledgment shall constitute a legal
33 determination of paternity, subject to the right of any signatory to rescind the
34 acknowledgment prior to the date of the support order, any other order adjudicating

1 paternity, or 60 days from the signing of the agreement, whichever is earlier. Recording
 2 such information in the putative father registry shall constitute a legal determination of
 3 paternity for purposes of establishing a future order for support, visitation privileges, and
 4 other matters under Code Section 19-7-51. Acknowledgment of paternity shall not
 5 constitute a legal determination of legitimation pursuant to Code Section 19-7-21.1 or
 6 19-7-22."

7 SECTION 6.

8 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile
 9 proceedings, is amended in Code Section 15-11-2, relating to definitions, by revising
 10 paragraph (10.1) as follows:

11 "(10.1) 'Legal father' means a male who:

12 (A) Has legally adopted a child;

13 (B) Was married to the biological mother of that child at the time the child was
 14 conceived or was born, unless such paternity was disproved by a final order pursuant
 15 to Article 3 of Chapter 7 of Title 19;

16 (C) Married the legal mother of the child after the child was born and recognized the
 17 child as his own, unless such paternity was disproved by a final order pursuant to
 18 Article 3 of Chapter 7 of Title 19;

19 ~~(D) Has been determined to be the father by a final paternity order pursuant to Article~~
 20 ~~3 of Chapter 7 of Title 19; or~~

21 ~~(D)(E) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or~~

22 (E) Has legitimated a child pursuant to Code Section 19-7-21.1

23 and who has not surrendered or had terminated his rights to the child."

24 SECTION 7.

25 Said chapter is further amended in Code Section 15-11-96, relating to the summons for a
 26 petition to terminate parental rights and the rights of biological fathers, by revising
 27 subsection (h) as follows:

28 "(h) When notice is given pursuant to subsection (e) of this Code section, it shall advise
 29 such biological father who is not the legal father that he loses all rights to the child and will
 30 not be entitled to object to the termination of his rights to the child unless, within 30 days
 31 of receipt of such notice, he files:

32 (1) A petition to legitimate the child pursuant to Code Section 19-7-22 or an
 33 acknowledgment of legitimation pursuant to Code Section 19-7-21.1; and

34 (2) Notice of the filing of the petition to legitimate or acknowledgment of legitimation
 35 with the court in which the action under this Code section is pending."

SECTION 8.

Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoption, is amended in Code Section 19-8-1, relating to definitions, by revising paragraph (6) as follows:

"(6) 'Legal father' means a male who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of that child at the time the child was conceived or was born, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of this title;

(C) Married the legal mother of the child after the child was born and recognized the child as his own, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of this title;

~~(D) Has been determined to be the father by a final paternity order pursuant to Article 3 of Chapter 7 of this title; or~~

(D)(E) Has legitimated the child by a final order pursuant to Code Section 19-7-22;
or

(E) Has legitimated the child pursuant to Code Section 19-7-21.1

and who has not surrendered or had terminated his rights to the child."

SECTION 9.

Said chapter is further amended in Code Section 19-8-12, relating to notice of adoption proceedings to the biological father and procedure related thereto, by revising subsection (e) as follows:

"(e) When notice is to be given pursuant to subsection (b) of this Code section, it shall advise such biological father who is not the legal father that he loses all rights to the child and will neither receive notice nor be entitled to object to the adoption of the child unless, within 30 days of receipt of such notice, he files:

(1) A petition to legitimate the child pursuant to Code Section 19-7-22 or an acknowledgment of legitimation pursuant to Code Section 19-7-21.1; and

(2) Notice of the filing of the petition to legitimate or acknowledgment of legitimation with the court in which the action under this Code section, if any, is pending and to the person who provided such notice to such biological father."

SECTION 10.

Code Section 29-2-15 of the Official Code of Georgia Annotated, relating to the notice of petition for appointment of permanent guardian, protest of father, and petition to legitimate, is amended by revising subsection (c) as follows:

1 "(c) If the biological father files a timely objection to the petition, the court shall hear the
2 objection and, if the biological father makes a request, shall continue the hearing for 30
3 days to allow the father to file a petition to legitimate the minor pursuant to Code Section
4 19-7-22 or an acknowledgment of legitimation pursuant to Code Section 19-7-21.1. If the
5 biological father's petition for legitimation of the minor is granted or if an acknowledgment
6 of legitimation has been filed, the petition for the appointment of a permanent guardian for
7 the minor shall be dismissed."

8 **SECTION 11.**

9 Chapter 2 of Title 53 of the Official Code of Georgia Annotated, relating to descent and
10 distribution, is amended in Code Section 53-2-3, relating to inheritance by children born out
11 of wedlock, by revising subparagraph (A) of paragraph (2) as follows:

12 "(2)(A) A child born out of wedlock may not inherit from or through the child's father,
13 the other children of the father, or any paternal kin by reason of the paternal kinship,
14 unless:

15 (i) A court of competent jurisdiction has entered an order declaring the child to be
16 legitimate, under the authority of Code Section 19-7-22 or such other authority as may
17 be provided by law;

18 (ii) A court of competent jurisdiction has otherwise entered a court order establishing
19 paternity;

20 (iii) The father has executed a sworn statement signed by him attesting to the
21 parent-child relationship;

22 (iv) The father has signed the birth certificate of the child; ~~or~~

23 (v) The father has declared the child to be legitimate pursuant to Code Section
24 19-7-21.1; or

25 (vi) There is other clear and convincing evidence that the child is the child of the
26 father."

27 **SECTION 12.**

28 Said chapter is further amended in Code Section 53-2-4, relating to inheritance from children
29 born out of wedlock, by revising subsection (b) as follows:

30 "(b) The father of a child born out of wedlock, the other children of the father, and other
31 paternal kin may inherit from and through the child born out of wedlock in the same
32 manner as if the child were legitimate if:

33 (1) A court of competent jurisdiction has entered an order declaring the child to be
34 legitimate under the authority of Code Section 19-7-22 or such other authority as may be
35 provided by law;

(2) A court of competent jurisdiction has otherwise entered a court order establishing paternity;

(3) The father has, during the lifetime of the child, executed a sworn statement signed by the father attesting to the parent-child relationship;

(4) The father has, during the lifetime of the child, signed the birth certificate of the child; ~~or~~

(5) The presumption of paternity described in division (2)(B)(ii) of Code Section 53-2-3 has been established and has not been rebutted by clear and convincing evidence; or

(6) The father has declared the child to be legitimate pursuant to Code Section 19-7-21.1."

SECTION 13.

All laws and parts of laws in conflict with this Act are repealed.